

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Biennial Regulatory Review - Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95)
97, and 101 of the Commission's Rules)
to Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)

WT Docket No. 98-20

To: The Commission

COMMENTS

BROWN AND SCHWANINGER

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SUMMARY OF THE FILING

Dennis C. Brown and Robert H. Schwaninger, Jr. d/b/a Brown and Schwaninger respectfully offer suggestions in a limited area of the Universal Licensing System proceeding. As preparers and vendors of the Form 600 Made Painless computer program, our experience may be useful to the Commission.

To conserve its scarce resources, the Commission should accommodate the offline preparation of individual applications. Online preparation consumes a substantial amount of communications and computer processing time; applications can more economically be prepared offline, with electronic communication used only for transmission of a data file.

The NPRM discusses electronic filing with the Commission, but does not appear to take into account that a high percentage of applications must first be submitted to frequency coordinators. To facilitate frequency coordination and competition in the field of application preparation software, the Commission should establish a standard data format and protocol for transmission of an application to the Commission and to all of the frequency coordinators.

In its interactive program, the Commission needs to provide for conversion to NAD 83 coordinates of coordinates which have been determined according to all other standards. Because most existing maps and known coordinates are based on the NAD 27 geoid, a very

large number of errors in the Commission's data base could result if the Commission failed to provide a function for coordinate conversion.

The Commission is both overly demanding of applicants and overly cautious with respect to its requirements for the provision of Taxpayer Identification Numbers.

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To: The Commission

COMMENTS

Dennis C. Brown and Robert H. Schwaninger, Jr. d/b/a Brown and Schwaninger (hereinafter, "we") respectfully submit our comments on a limited area of the above captioned matter.¹ In support of our position, we show the following.

A New, Modern Record

The Commission has proposed to simplify application filing by replacing a group of specific purpose applications with one large application, which, including all components and instructions, runs a record breaking 91 pages. The proposed Form 601 is a bridge far beyond the single page Form 574 which the Commission used for many years in the Private Radio Services. When simplifying application filing in such a manner, the Commission has a special

¹ The instant comments discuss areas of specific concern to Brown and Schwaninger and are filed without prejudice to comments which we are concurrently filing on behalf of some of our clients.

responsibility to the public to make use of the form as simple for the public as it is intended to be for the Commission.

Since the Commission began using the Form 600 application, we have provided to the industry a Windows computer program, "Brown and Schwaninger's Form 600 Made Painless". The program enables a person to prepare the Form 600 application for any of the six Radio Services for which the Form 600 is used², and to print the application on plain paper, using a laser, inkjet, bubblejet, or high resolution dot matrix printer. The program incorporates a number of features, such as error checking, both interactively and after completion of the application³; an effective radiated power calculator; and assistance with entering the variety of codes which the Commission uses for emission designators, Radio Services, and operation types. Our manual which accompanies the program runs approximately 125 pages and explains each item of the Form 600 application in detail. Because we are lawyers, we have been able to include in the program and the instructions general legal advice for completing the Form 600 application in compliance with the Commission's Rules. The assistance which our program

² Those Radio Services are Cellular, Personal Communications Service, Air-Ground, Paging and Radiotelephone, Broadcast Auxiliary, and Private.

³ For example, during the interactive process of entering data, Form 600 Made Painless will not allow the user to enter an invalid state name abbreviation. During the printing process, the program compares various items of data against one another and against standard data and flags such situations as a user entered ground elevation which exceeds the highest or lowest point in the state.

provides to a user results in the filing of an application which has a higher probability of grant, without the common types of errors and causes for delays in processing.

Other persons offer competing programs which provide similar benefits to applicants. Some are similar to the Commission's provision of forms via the Internet, in that those programs print a blank form for completion on a typewriter. Others are much more complex, allowing the preparer to enter information on the computer screen, save the data to magnetic disk, and reload a completed application for later modification.

In its Notice of Proposed Rulemaking, the Commission proposed to provide for interactive preparation of an application while connected to the Universal Licensing System and to provide for the acceptance of a batch of applications which were prepared offline. Frequency coordinators and some few applicants can be expected to file batches of applications, but the Commission should also facilitate the offline preparation of single applications and their electronic filing.

Preparation of an application online consumes the Commission's scarce resources, at no proposed charge to the applicant, because the Commission must provide a computer and communications system which is capable of handling multiple, simultaneous, interactive application preparation sessions. The Commission can conserve its resources by facilitating the preparation of individual applications offline and the electronic filing of such applications, with

the Commission's resources' being required only for the electronic filing, and not for interactive application preparation.

Experience with the Commission's Internet site shows that as the number of simultaneous demands placed on that system increase, the system's speed of response slows. For example undersigned counsel's experience in downloading data via file transfer protocol shows that, as additional files are requested concurrently, the speed at which the Commission's system responds and begins sending the next file deteriorates greatly. If the Commission were to rely on an increasing level of online application preparation on a shared computer system, it would have to plan for an increasingly capable computer system to avoid having the system's speed of response become intolerable to applicants. To satisfy the expected demand at the lowest cost, the Commission should facilitate the offline preparation of individual applications.

The Commission proposed not to charge a per minute fee for the filing of an application electronically. While the Commission may find it in the public interest not to charge a fee for the filing of an application electronically which is any higher than the fee for filing an application on paper, the Commission may find it in the public interest to charge a per minute fee for preparing an application interactively online. Such a fee would reasonably ration an optional use of the Commission's resources to those who most desire them and avoid the necessity for the Commission to spend unrecoverable money to build an excessively large computer system.

Form 600 Made Painless has been well accepted and is currently employed by hundreds of industrial and commercial service radio system operators. We desire to continue to assist applicants by preparing a successor to our current program for the Form 601 and the associated new forms. However, to facilitate our preparing a successor computer program and to promote competition in the field,⁴ we respectfully request that the Commission standardize an aspect of the application process which was not raised in the Commission's Notice of Proposed Rule Making.

The Commission stated at paragraph 52 of its NPRM that it intended to specify the format in which it would accept an electronically filed application. While such a specification is an essential component of the Universal Licensing System, it should be recognized that a high percentage of applications are not filed directly with the Commission. Rather, tens, if not hundreds, of thousands of applications each year are initially submitted to a frequency coordinator, which then sends the coordinated application to the Commission. To promote competition and to improve the Commission's processing of applications, the Commission should specify the format in which coordinators are to receive applications electronically.

⁴ We initially conceived the Form 600 Made Painless program as a means by which our legal services clients could economize in the preparation of license applications. The program has exceeded our initial intentions and expectations and is used by many entities which are not our legal services clients. The program has been rewarding to us and to its users, but it remains a relatively minor line of our work, and we are pleased to see the public interest served by the entry of competing software products.

As we view the subject, there are two aspects to an electronic data transmission. The first is the communications protocol, that is, the method by which the machines talk to one another. Typical communications protocols are Electronic Data Interchange (EDI) and Telecommunications Protocol/Internet Protocol (TCP/IP). The second aspect is the format in which the data is to be sent. Elements of the format include the sequence of items of data and a standard for how items of data are to be separated.

We are informed that the Commission and the coordinators presently communicate using the EDI protocol. We have no opinion concerning the protocol which should be used,⁵ but we urge the Commission to use the same protocol for receiving applications directly from applicants as it uses for receiving applications from coordinators. Unless the Commission specifies the same protocol for receiving all applications, we and other software developers would have the burden of preparing an significantly more complex program, with an accompanying higher cost to end users at no obvious benefit to anyone.

Development of the software for a communications protocol is a costly undertaking, and independent software developers need assurance that when the Commission adopts a communications protocol, it will adhere to that protocol for an extended period of time. Without

⁵ We do recommend that the Commission consider using TCP/IP, because that protocol is an integral component of Microsoft Windows 95 and is also to be an integral component of Windows 98. Use of TCP/IP would avoid the necessity of software developers' reinventing the wheel of EDI.

such an assurance, competition in the provision of electronic filing software will be either highly limited or non-existent.

While the Commission has taken substantial steps in its Refarming proceeding to promote competition among frequency coordinators, we strongly suggest that there is no competitive value to one data format over another. That is, there is no value to the public of one coordinator's specifying transmission of the applicant's name followed by the applicant's street address, while another coordinator specifies transmission of the applicant's name followed by the applicant's voice telephone number. If the Commission and the public are to receive the benefits of competition in the field of application preparation software, the Commission should specify the format for transmitting the data requested by its forms. Each of the coordinators certainly needs information which is not included on the Commission's application form, and we suggest herein a means by which the Commission's format can provide for such information.

We suggest that the Commission adopt a format which defines the sequence in which each of the items of the Commissions' form shall be transmitted. For example, the format could specify that Item 1 of page one shall be followed by Item 2 of page one, and so forth. Following definition of the sequence for transmission of the items of the Commission's form, the Commission's format could provide data fields for additional information desired by the frequency coordinators.

We can suggest two alternative approaches to specification of the additional data fields.

The first approach would be for the Commission to specify, say, fifty additional fields, and allow each frequency coordinator to define its use of those fields. The more efficient way would be for the Commission to request that each of the certified frequency coordinators identify the additional fields of data which they desire. To the extent possible, the Commission can then unify the coordinators' requests and specify, for example, that Field 12 shall be a single digit identifying whether payment for the coordinator's services is by credit card (1) or debit from a prepaid account (2); and that Field 13 shall be the 16 digit number of the account to be charged. To facilitate the development of a computer program which can be used for preparation of applications for transmission to all of the frequency coordinators, without an unreasonable amount of internal duplication and program complexity, we strongly suggest the second approach, in which the Commission ascertains all of the coordinators' information requirements, conforms the information items to the extent possible, and defines as many fields as possible.⁶

⁶ When an application is filed directly with the Commission by an applicant, the Commission can simply disregard the fields which are provided for use by the coordinator. Each frequency coordinator can also use or disregard items of coordinator data, as it chooses. The manner in which an application and associated data are displayed on a monitor or printed to paper can be left entirely to the discretion of each of the frequency coordinators.

Geographic Coordinates

At paragraphs 69 and 70 of its NPRM, the Commission proposes to require the submission of geographic coordinates in the North American Datum 83 form. In principle, we have no objection to such a requirement, however, the Commission should recognize that its interactive program would need to perform the conversion from NAD 27 coordinates. The vast bulk of the maps in use and the vast bulk of known coordinates are based on NAD 27. The conversion between NAD 27 coordinates and NAD 83 coordinates is complex; it cannot be performed by a couple of simple additions or subtractions. The Commerce Department makes available a public domain computer program, NADCON,⁷ for the conversion, but only a small percentage of applicants is likely to appreciate the necessity for such a program and take the steps necessary to obtain a copy of the program.⁸

No computer or human processor can determine by inspection of a set of coordinates whether the coordinates are based on NAD 86, NAD 83 or NAD 27. Accordingly, if the Commission's program does not require the applicant to specify the basis for the coordinates and perform conversions automatically to NAD 83, the Commission's data base could quickly become filled with incorrect coordinates as the result of submission by applicants of NAD 27 coordinates which the Commission would assume to have been based on the NAD 83 geoid.

⁷ The United States Geodetic Survey has adopted the NADCON method as its standard for converting between NAD27 and NAD83.

⁸ The Commerce Department also supplies the Fortran source code for its program, but that code cannot be compiled, without substantial modification, in Microsoft brand Fortran 5.0.

Because the Commission needs correct coordinates, but the ordinary applicant cannot reasonably be expected to have or to obtain a computer program for coordinate conversion, the Commission's ULS program should provide for the specification and input of NAD 27 coordinates, with conversion provided by the Commission's program.

The Taxpayer Identification Number

The Commission appears to be both overly demanding and overly cautious with respect to the Taxpayer Identification Number (TIN). The Securities and Exchange Commission publishes the TIN of every publicly traded company on its Web site. Accordingly, the Commission does not need to take any care to protect the TIN of a publicly traded company. The TINs of millions of businesses must be made readily available to other businesses for compliance with Internal Revenue Service reporting requirements, and, accordingly, the Commission would not be justified in incurring any substantial expense or impairing the flexibility of its system for the purpose of protecting business TINs.

The need for filing a Social Security Number (SSN) is entirely that of the applicant. The Commission has no need for an SSN to carry out its tasks. Many individuals are extremely uncomfortable about the possibility of disclosure and dispersion of their SSNs. To accommodate those persons, the Commission should make submission of an SSN optional in the ULS. If such person were more concerned about protecting their SSNs than obtaining any possible refunds, the Commission should allow such persons to refrain from providing an SSN, with the

consequence that any refunds which might be due those applicants would escheat to the Treasury.

The Commission is justified in requesting the TIN of an applicant who desires a refund. At Item 13 of the Main Form, the Commission would improperly request the TIN of a person other than the applicant. Consider the following common situation: Y Corporation is the applicant. Ms. X controls Y Corporation, and so, should be identified at Item 12 as the real party in interest. Whether Ms. X is current on her taxes is irrelevant to the tax status of Y Corporation. If Y Corporation is current on its taxes, then Y Corporation should be entitled to receive any refund which may be due it, without regard to the tax status of Ms. X. Accordingly, the Commission has no need for the TIN of the real party in interest and Item 13 should not be included on the Form 601.

Miscellaneous

At Item 23 of the Main Form, the Commission asks whether the applicant would prefer that the authorization be sent by e-mail, rather than by U.S. mail. This item begs the question of how the Commission will authenticate an e-mailed authorization. That is, in the event that a Commission inspector demands to see an operator's license, how will the inspector assess the validity of the license? Banknote paper and the printing of the Commission's seal on a traditional license provide a measure of authenticity to a license document. On what will the inspector rely for the authenticity of a presented license? In a purchase and sale transaction, on what will the buyer of a station rely to authenticate the offered authorization? Because of the

risk of loss of the Commission's data, the Commission cannot rely on the absence of a corresponding record in its machine as evidence that an e-mail document is a counterfeit. Because of the vagaries of electronic data transmission and storage which preclude reliance on the Commission's records as against an operator's electronic records, how will the Commission prevent the alteration of an e-mailed authorization? Until such time as the Commission devises a way for a Commission inspector to assess reliably the validity of an e-mail message presented by a licensee, the Commission should not begin to issue licenses by any means other than the traditional.

At Item 34 of the Main Form, the Commission informs a common carrier applicant that an Ownership Form must either be filed with the application or already be on file with the Commission. Since the advent of the Commercial Mobile Radio Service classification, the Commission appears to have had difficulty searching its files for existing Common Carrier Qualification Reports, because it has returned many applications, requesting the filing of the report, when, in fact, such a report was on file. To prevent the delays that result from mishandlings, the Commission should provide electronically a file number at the time of the filing of a Form 602 Report and should provide a field on the Form 601 application for the insertion of that file number so that the Commission can readily find the filed Form 601, rather than demanding an additional, unnecessary filing.

Item 38 of the application cannot be answered reliably. Item 38 asks whether the applicant is exempt from FCC regulatory fees. Carriers whose regulatory fees would be below

a certain threshold are exempt, but an applicant filing in October is not likely to be able to know whether it will cross the threshold the following September. Since Item 38 cannot be expected to produce reliable information, it should either be sharpened or removed.

On proposed Schedule B of the Form 601, the Commission provided a group of certifications of eligibility. Among those certifications are statements for use by small businesses and by rural telephone companies. Section 309(j)(3) requires that the Commission disseminate licenses to four groups of designated entities, including small businesses, rural telephone companies, businesses owned by minorities, and businesses owned by women. To meet its statutory obligations, Schedule B should include an eligibility certification for minorities and an eligibility certification for women.

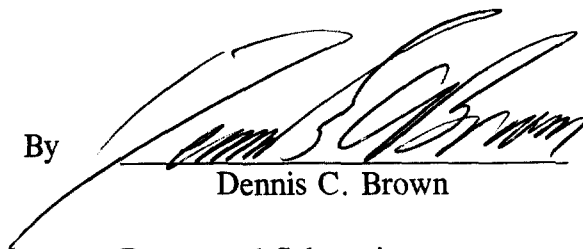
At Rule Section 1.931(a)(5), the Commission proposed to allow a request for Special Temporary Authority to be made by telephone or telegraph. To what telegraph carrier does the Commission suggest a person should turn to send a telegram to the Commission? We suggest that the expression "by telephone or telegraph" be replaced by the word "electronically", which would cover telephone, fax, computer, or any other available electronic means.

Conclusion

For all the foregoing reasons, we respectfully request that the Commission facilitate the offline preparation of applications and standardize the protocol and format by which data shall be entered electronically into the Universal Licensing System, and make the revisions in its forms and procedures which are suggested herein.

Respectfully submitted,
BROWN AND SCHWANINGER

By

A handwritten signature in black ink, appearing to read 'Dennis C. Brown', is written over a horizontal line.

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